IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.36 OF 2006

Appa Tatyaba Akhade ....Applicant.

V/s

The State of Maharashtra ....Respondent.

Mr. S.R. Bhosale for the applicant.

Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 1st February, 2006

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned APP for the State.

2. The applicant was arrested in connection with the offence which was registered with the Paud Police Station, Tal. Mulshi, District Pune under section 302 read with section 34 of the Indian Penal Code. It is alleged that the applicant killed the deceased on account of enmity between the Kondekar family and Kudle family.

3. The learned Counsel appearing on behalf of the applicant has submitted that there is no evidence against the present applicant. The statement of the

alleged eye witness has been recorded after some time and no explanation has been given by him regarding the delay in giving the said statement to the Police. The learned Counsel also seeks bail on the ground of parity. He submits that other accused have been released on bail.

4. The learned APP, on the other hand, vehemently opposed the said application. She submitted that there are two witnesses who have seen the applicant near the deceased and one witness has seen the applicant assaulting the deceased with the scythe and he had heard the name of the applicant being taken by the deceased. She submitted that there were as many as 11 injuries on the person of the deceased and the applicant was murdered in most gruesome manner.

5. I have heard the learned Counsel appearing on behalf of the applicant and the learned APP at length. The post-mortem report indicates that there are as many as 11 injuries and 4/5 incised wounds on the head and the throat. There is one eye witness to the said incident. It is no doubt true that his statement has not been immediately recorded by the Police. However, mere delay in recording the statement of the witness by itself does not dilute the testimony of the said

witness or on that ground it is not possible to discard the said testimony. The applicant has been identified in a test identification parade by the eye witness. In view of this evidence which is on record, in my view, this is not a fit case for grant of bail. Further, the applicant was also involved in another murder case. It is true that the applicant was acquitted by the Sessions Court in the said case. However, the fact remains that the applicant has past antecedent and, if he is released on bail, there is every possibility and likelihood that he may threaten the witnesses and tamper with the evidence. Though, the applicant is seeking bail on the ground of parity, the said submission, in my view, cannot be accepted. In the said case, this Court had observed that the applicant - Kishor Dandekar is not attributed any role in the assault to the deceased by the eye witness. Though the learned Judge has recorded the submissions of the counsel appearing on behalf of the applicant in the said case where he had severely criticised the manner in which the said witness had conducted himself after having seen the alleged offence and also the learned Judge noted the criticism made by the learned Counsel regarding the manner in which the identification parade is held, the said submission of the learned Counsel for the applicant was not accepted

in toto or no finding has been recorded on the said submission. Therefore, the submission of the learned Counsel for the applicant that this Court had criticised the subsequent conduct of the eye witness cannot be accepted.

6. In the result, this is not a fit case for grant of bail. Application for bail is, therefore, rejected.

V.M. KANADE, J.